

APPEAL NO. 040266
FILED MARCH 4, 2004

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on January 6, 2004. The hearing officer resolved the disputed issues by deciding that the appellant's (claimant) compensable injury of _____, includes the left shoulder, left hip, and left ankle, but does not include the cervical, thoracic, or lumbar spine, and that the claimant had disability as a result of his compensable injury from June 2 through June 17, 2003, but not from May 30 through June 1, 2003, nor from June 18, 2003, through the date of the CCH. The claimant appeals, contending that the evidence proves that his compensable injury includes his cervical, thoracic, and lumbar spine, and that he had disability from the date of the injury through the date of the CCH. The respondent (carrier) asserts that sufficient evidence supports the hearing officer's decision. There is no appeal of the hearing officer's determination that the claimant's compensable injury includes the left shoulder, left hip, and left ankle, which determination was based on a stipulation made by the parties.

DECISION

Affirmed.

The claimant had the burden to prove that his compensable injury includes his cervical, thoracic, and lumbar spine, and that he had disability as defined by Section 401.011(16). Conflicting evidence was presented on the disputed issues. The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). As the finder of fact, the hearing officer resolves the conflicts in the evidence and determines what facts have been established. The claimant states that he was not allowed to rebut the carrier's surveillance videotape because it was not played at the CCH. The record reflects that the claimant did not object to the admission of the videotape into evidence and that he said he was not worried about it. In addition, while the claimant's attorney indicated during direct examination of the claimant that the videotape would be played at the CCH, no request was made to the hearing officer for the videotape to be played at the CCH. Consequently, any complaint regarding the videotape was not preserved for appeal. Although there is conflicting evidence in this case, we conclude that the hearing officer's decision on the appealed issues are supported by sufficient evidence and are not so against the great weight and preponderance of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175 (Tex. 1986).

We affirm the hearing officer's decision and order.

The true corporate name of the insurance carrier is **ZURICH AMERICAN INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**LEO MALO
12222 MERIT DRIVE, SUITE 700
DALLAS, TEXAS 75251.**

Robert W. Potts
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Thomas A. Knapp
Appeals Judge